STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 1, 2005
v	No. 252514 Kent Circuit Court
DOUGLAS LEE BOLEN, Defendant-Appellant.	LC Nos. 03-000927-FH; 03-001176-FC; 03-004120-FH

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree criminal sexual conduct ("CSC-1"), MCL 750.520b(1)(a), third-degree criminal sexual conduct ("CSC-3"), MCL 750.520d(1)(d), and aggravated stalking, MCL 750.411i. We affirm.

Defendant first contends that he was deprived of a fair trial by evidence of other bad acts improperly admitted by the trial court. Because this issue was not preserved at trial, it will be analyzed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999).

MRE 404(b)(1) prohibits the admission of evidence that a defendant committed other crimes, wrongs, or acts, "to prove the character of a person in order to show action in conformity therewith." However, other acts evidence can be admitted under certain circumstances. Our Supreme Court has stated that, although MRE 404(b) limits the admissibility of other acts evidence, "it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). Furthermore, where the evidence of other acts is so "blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime," the other acts evidence is admissible. *Id.* at 742. In the present case, the testimony to which defendant objects was offered to explain why defendant's wife left him and to explain the context within which her daughter revealed the sexual abuse that had been occurring for twelve years. Likewise, to prove the elements of aggravated stalking, the prosecutor needed to show that, under the circumstances, a reasonable person would have felt, and that defendant's wife actually felt, terrorized, frightened, intimidated, threatened, harassed, or molested. MCL 750.411i(1)(e). This other acts testimony, which was intimately tied to the evidence presented to prove the elements of the aggravated

stalking charge, allowed the jury to fully understand the import of the letters offered into evidence and their threatening nature to the victim. Therefore, the testimony to which defendant objects, was offered for a permissible purpose under MRE 404(b) and was relevant. MRE 401.

Finally, we conclude that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403 does not prohibit all prejudicial evidence, only evidence that is unfairly prejudicial. Evidence is unfairly prejudicial if it is given undue weight or preemptive weight by the jury. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995). In this case, the testimony to which defendant objects was highly probative of both the context of the events and the actual elements of the stalking crime. Likewise, the danger that the jury would convict defendant of the charged crimes solely based upon the fact that evidence that defendant had threatened his wife is highly unlikely. Hence, it cannot be said that the evidence's probative value was substantially outweighed by the danger of unfair prejudice. Because MRE 404(b) did not bar the admission of the testimony to which defendant objects, the trial court cannot be said to have abused its discretion by permitting its admission. Therefore, there was no plain error, let alone plain error that affected defendant's substantial rights. *Carines, supra*.

Defendant next contends that his sentence was unconstitutional based upon the recent United States Supreme Court decision in *Blakely v Washington*, 542 US ___; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree. Our Supreme Court has addressed the same argument made by defendant and specifically stated that the United States Supreme Court's decision in *Blakely* did not affect our sentencing system. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004).[1]

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio

[1] Although not raised in the statement of questions presented, see MCR 7.212(C)(5); *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999), defendant also contends that the failure to challenge the sentence on this basis in the trial court was constitutionally ineffective assistance of counsel. Pursuant to *Claypool, supra*, this challenge, even if preserved, is without merit.